

FLORIDA CASE LAW UPDATE 15-02

Case: Markus v. State, 40 FLW D548b (Fla. 1st DCA)

Date: February 27, 2015

Subject: Conviction of Defendant for felon in possession of a firearm was reversed where firearm was discovered after police chased the defendant into his garage in order to effect an arrest for marijuana possession. Police may generally not pursue a suspect into their home, or the curtilage thereof, in order to arrest for a misdemeanor.

FACTS: A police officer on foot patrol noticed Markus and others smoking and drinking beer on a public street. As he got closer, the officer smelled the odor of burning marijuana, and asked Markus to stay where he was while the officer attempted to detain him. Markus instead ran from the officer and into the open garage of his nearby residence. The officer pursued the suspect into the garage, where a physical struggle ensued. Markus was arrested, and during a search of his person a firearm was found in his waistband. At trial the defendant moved to suppress the firearm, arguing that the arrest inside his garage constituted an illegal entry in violation of the 4th Amendment. The trial court denied the motion, holding that the entry into the garage, and the subsequent arrest of the defendant, was allowable under the "hot pursuit" doctrine. Markus was convicted, and this appeal followed.

RULING: The First District Court of Appeal reversed the trial court, holding that as a general rule, "hot pursuit" is not available as an exception to the 4th Amendment when the suspect is being chased into his home in order to arrest for a misdemeanor offense.

DISCUSSION: The appellate court begins by noting that the U. S. Supreme Court has identified the "physical entry of a home as the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573 (1980). Absent exigent circumstances, the threshold of the home (including its curtilage) cannot be crossed without a warrant. *Payton*; *Lee v. State*, 856 So.2d 1133 (Fla. 1st DCA 2003). While "hot pursuit" is in fact recognized as an exception, its application is ordinarily limited to the pursuit of fleeing felons, because the seriousness of the crime is more likely to support the emergency nature of the entry. When the entry onto the protected area is for a minor offense, however, the courts are much less likely to recognize the exception. "When the government's interest is only to arrest for a minor offense, the presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such an arrest only with a warrant issued upon probable cause." *Welsh v. Wisconsin*, 466 U.S. 740 (1984). The Court in the present decision states that "to rebut the presumed illegality of warrantless entry by the police into a person's home, the exigent circumstance must involve a threat to the safety of the public, property, or police, which required immediate action by the officers, with no time to obtain a warrant." In this case, the marijuana offense which gave rise to the encounter did not satisfy that threshold. The Court further opined that if the police felt Markus needed to be arrested immediately, they could have secured the premises and sought an arrest warrant before making entry. Motion to Suppress granted, conviction reversed.

COMMENTS: Note that the court does not say that "hot pursuit" into a constitutionally protected area after a fleeing misdemeanant can never be justified. However, in order to justify the entry, the officers must articulate that the underlying crime was of the type that the safety of the public, property, or the police required the intrusion, and there was no time to obtain a warrant. Similarly, the Court is not saying that the police cannot chase fleeing misdemeanor suspects - only that they cannot be chased into areas protected by the 4th Amendment unless the exception is recognized.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.